IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 916 OF 2004

Lallan R. Sharma ... Appellant

V/s

Salikram R. Sharma & ors. ... Respondents

Mr. Suresh Gole for the appellant.

Mrs. Nandini Gupta i/by M/s. M.P.Vashi & Associates for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 20TH SEPT., 2004.

P.C.:

1. Heard both sides. Perused the record.

2. Rule. Rule made returnable forthwith by consent of the parties.

3. This appeal is aimed against the judgment and order dated 24.1.2002 in S.C. Suit No. 2168 of 2001 decreeing the suit in terms of prayer clauses (a) & (b). Prayer clauses (a) & (b) read thus -

(a) that, it be declared by this Honourable

Court that the plaintiffs are joint owners with the defendants of the business of Shankar Hair Cutting Saloon having equal share of 20% each and joint tenant and/or co-tenant of the Shop No.16, situated at Sani Plumb Corporation, Opp. Telecom Factory, Near Shankar Temple, S.T. Road, Deonar, Mumbai - 400 088;

(b) the suit premises be partitioned and/or divided by an order and direction of this Hon'ble Court by metes and bounds and the plaintiffs' 20% share each be allotted and handed over by and under the supervision of the Hon'ble Court.

4. Shri Gole, learned advocate for the appellant vehemently urged that by virtue of prayer clause (a), what is sought by the plaintiff in the suit is, declaration to the effect that they are joint tenant in the suit premises. Clause (b) of the relief, for which also decree is passed, is consequential relief and it also cannot be gone into by the City Civil Court.

5. Having considered the relevant aspects on merits, it is obvious that the City Civil Court has no jurisdiction to decide the issue of tenancy rights and, therefore,

this reason alone is sufficient to remand the matter to the lower Court with certain directions.

6. The appeal is allowed. The proceeding is remanded to the City Civil Court with direction that the issue of tenancy or joint tenancy and/or co-tenancy being exclusively within the relm of Small Causes Court, cannot be determined by the City Civil Court and keeping this aspect in mind, the lower Court is directed to adjudicate all the relevant issues according to law.

R & P be transmitted forthwith to the lower Court and the lower Court shall decide the matter on merits after giving opportunity to both sides, within four months from the date of this order.

With these directions, the appeal stands disposed of.

It is clarified that both parties shall maintain status-quo during pendency of the proceeding in the lower Court.

The defendant shall be at liberty to move the lower Court seeking directions to file the written statement and if so allowed by the lower Court, he shall do so.

C. c. expedited.

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